

FILED

May 6 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 08-0499

STATE OF MONTANA ,

Plaintiff and Appellee,

v.

DAVID W. GUNDERSON,

Defendant and Appellant.

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORDER

On March 6, 2009, Koan Mercer, counsel for appellant David W. Gunderson, filed with the Court his motion and supporting brief asking to be allowed to withdraw from this appeal on grounds that he has been unable to find any nonfrivolous issues for appeal. Pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and § 46-8-103, MCA, we allowed Gunderson time to personally file a response to his counsel's motion, which he did.

The Court has now completed its examination of all the proceedings herein, as required under *Anders*. We conclude that Gunderson may have nonfrivolous issues to raise on appeal, including whether he received ineffective assistance of counsel as a result of his attorney's failure to request lesser-included offense instructions on trespass and sexual assault and whether the court erred in imposing 51 conditions on his 100-year prison sentence when no portion of the sentence, which allows no possibility of parole, was suspended.

IT IS THEREFORE ORDERED:

1. Mercer's motion to be allowed to withdraw is GRANTED.
2. The Office of the Appellate Defender is directed to assign new counsel to represent Gunderson, which new counsel shall file a notice of appearance with the Clerk of this Court within 10 days of the date of this Order.

3. The opening brief on appeal, addressing the above issues as well as any other nonfrivolous issues, shall be prepared, filed and served within 45 days of the date of this Order.

The Clerk is directed to provide copies of this Order to all counsel of record, to Chief Appellate Defender Jim Wheelis, and to David W. Gunderson personally.

DATED this 16th day of May, 2009.

Chief Justice

Brian M. Morris

James
William Leaphart

Jim Rice
Patricia Coffer

John Varner
Justices